

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)**

In re:

COSI, INC., *et al.*,¹

Debtors.

**Chapter 11
Case No. 16-13704-MSH**

(Jointly Administered)

**DEBTORS' MOTION TO AMEND DEBTOR'S
MOTION FOR AN ORDER APPROVING
KEY EMPLOYEE RETENTION PROGRAM**

TO THE HONORABLE MELVIN S. HOFFMAN:

Cosi, Inc., on behalf of itself and affiliated debtors and debtors-in-possession (collectively, the "Debtors" or the "Company"), hereby submits this modification (the "Modification") to its motion (the "Motion") for an order approving the Debtors' key employee retention program for certain non-insider employees (the "KERP") and authorizing the payments contemplated thereunder. The Modification seeks to eliminate three employees from participation in the KERP. In support of this Modification, the Debtors respectfully represent as follows:

1. The Debtors filed the Motion on September 28, 2016. The Motion is presently scheduled for hearing on October 20, 2016.
2. Since filing the Motion, the Debtors have had discussion with the Office of the United States Trustee (the "UST"). The UST raised a concern that there were three employees identified as KERP participants on **Exhibit A** to the Motion who are not eligible to participate in the KERP under the requirements of Bankruptcy Code § 503(c)(1) or (2).

¹ The Debtors in these Chapter 11 cases are Cosi, Inc. (Case No. 16-13704), Xando Cosi of Maryland, Inc. (Case No. 16-13706), Cosi Sandwich Bar, Inc. (Case No. 16-13705), Hearthstone Associates, LLC (Case No. 16-13707), and Hearthstone Partners, LLC (Case No. 16-13708). The Debtors' corporate offices are located at 294 Washington Street, Suite 510, Boston, Massachusetts 02108. The cases are jointly administered under the Cosi, Inc. case number.

3. Specifically, the UST asserted that the following proposed participants are “insiders” and therefore not eligible to participate: (a) Vicki Baue, Vice President & General Counsel, and Assistant Secretary; (b) William Nicolini, Vice President of Operations; and (c) Tania DiSciullo, Controller and Assistant Secretary (collectively, the “Officers”). Those Officers are the first three employees listed on Exhibit A to the Motion.

4. After consultation with the UST, the Debtors hereby amend the KERP to eliminate the Officers from the list of KERP participants. A revised Exhibit A is attached hereto.

5. The Debtors respectfully request that this Court enter an Order approving the KERP as amended, as such approval is in the best interest of the Debtors’ estates, their creditors and all parties-in-interest.

Respectfully submitted,

**COSI, INC., XANDO COSI OF
MARYLAND, INC., COSI SANDWICH
BAR, INC., HEARTHSTONE
ASSOCIATES, LLC, AND
HEARTHSTONE PARTNERS, LLC**

By their proposed counsel,

/s/ Paul W. Carey

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Dated: October 6, 2016

**UNITED STATES BANKRUPTCY COURT
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In re:

COSI, INC., *et al.*

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**Chapter 11
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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2016, I caused a copy of the following document to be served upon each party noted on the attached Service List via First-Class United States mail, postage prepaid, or as otherwise noted on the attached Service List:

- Debtors' Motion To Amend Debtor's Motion For An Order Approving Key Employee Retention Program.

/s/ Paul W. Carey

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